IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/08/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.29447 OF 2002 AND WRIT PETITION NO. 32394 OF 2002
AND
W.P.M.Ps.47842, 47843 AND 47112 OF 2002.

W.P.NO.29447 OF 2002

O.R.Dhanasekaran ... Petitioner

-Vs-

1.The Joint Registrar of
Cooperative Societies/
Central Registrar of Multi-State
Cooperative Societies,
Chennai Region,
Chennai-600 018.

2.The President,
The Government Telecommunication
Employees Cooperative Society Limited,
No.37-A, Sembudoss Street,
Chennai-600 001. ... Respondents

W.P.NO.32394 OF 2002:
C.M.Devika ... Petitioner

Vs.

1.Joint Registrar
Central Registrar of
Cooperative Societies,
Chennai Region,
Chennai.

2.The President,
The Governmetn Telecimmunication
Employees Cooperative Society Limited,
37-A, Sembudoss Street,
Chennai-600 001. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of
India praying to issue Writs of Certiorarified Mandamus as stated therein.

!For petitioner in
WP.29447/2002 : Mr.S.M.Subramaniam

For petitioner in
W.P.32394/2002 : Mr.M.Venkatachalapathy,SC
for Mr.M.Sriram
^For respondents
in both the Wps. : Mr.M.S.Palanisamy

:COMMON ORDER
W.P.No.29447 of 2002 has been filed praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in letter No.Rc.4821/2002/C3, dated 18.7.2002 and the consequential order of termination passed by the second respondent in Proc.RC.No.420 /2000 dated 24.7.2002 and quash the same and consequently direct the respondents to reinstate the petitioner in service with full backwages and consequential service benefits.

2. W.P.No.32394 of 2002 has also been filed praying to issue a Writ of Certiorarified Mandamus to call for the entire records of the second respondent in connection with the impugned proceedings Rc.No.420/2000, dated 24.7.2002 and quash the same and consequently direct reinstatement of the petitioner with continuity of service without any break and with all attendant service benefits like seniority, wages etc.

3. For the sake of convenience and easy reference, the above writ petitions are respectively referred to as the first and second writ petitions and the petitioners therein as the first and second petitioners respectively.

4. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that both the petitioners were appointed in the second respondent Cooperative Society respectively as the Receipt Writer and the Ledger Clerk in the vacant places and they were confirmed in their respective posts in accordance with Bye-law 65(6)(1) of the second respondent Society; that the first respondent addressed a letter to the second respondent in reference Lr.Rc.No.4821/2002/C3, dated 18.7.2002 thereby stating that certain irregularities have been noticed in the recruitment of the staff during 1997-2000 and required the second respondent to remove the petitioners along with four others from their services.

5. It further comes to be known that regarding the petitioners, the irregularity pointed out by the first respondent is that they crossed the age of 30 years at the time of their appointment in the Government Telecommunication Employees Cooperative Society.

6. It further comes to be known that consequent to the said

communication by the first respondent, the second respondent, by his proceedings in reference Rc.No.420/2000, dated 24.7.2002 removed the petitioners along with other employees from their respective services with effects from 24.7.2002 and hence the petitioners have come forward to file the above writ petitions on certain grounds as brought forth in the grounds of writ petitions.

7. Regarding the irregularities pointed out by the first respondent in his communication dated 18.7.2002, the petitioners would submit that the appointment having been made provisionally and came to be confirmed coupled with the fact that there is a deemed relaxation of age qualification, the respondents are estopped from taking any step to disturb the services of the petitioners that too after five years of service.

8. The main ground raised by the petitioners is that the second respondent without affording an opportunity to them, has removed them from the services, which is against Bye-law No.65(6)(i)(b) and 65(13)(a)&(c)of the Government Telecommunication Employees Cooperative Society Limited.

9. For easy reference, Bye-law No.65(6)(i)(b) is extracted hereunder:

"It shall be competent for the appointing authority to terminate the services of the employee during the subsequent six months of his probation and also during his regular service provided that the authority shall not dispense with the services of a person, except for reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice provided

also, however, that such notice shall not be necessary, when the services of such a person are dispensed with on a charge of misconduct and supported by satisfactory evidence recorded in an enquiry held for the purpose."

10. When the above matters came up for admission before this Court in the presence of the learned counsel for the petitioners and the learned Additional Government Pleader (Cooperatives) taking notice on behalf of the respondents, the legal point that surfaced for determination is "whether the mandatory provision of the Bye-law No.65(6)(i)(b)of the Government Telecommunication Employees Cooperative Society Limited requiring `at least one month's notice or wages in lieu of such notice' is necessary to the cases in hand and whether the same has been complied with?'

11. It is an admitted case that no such notices have been given to the petitioners by the respondents thus giving effect to the said Bye-law and therefore it has become the prime responsibility of this Court to ascertain whether, in the given facts and circumstances of the cases concerned with the orders impugned removing the petitioners from their services by such orders is justifiable ones?

12. On the part of the learned counsel for the petitioners it would be argued that no such removal could be done within the meaning of the

said Bye-law and the petitioners could have explained the circumstances in a convincing manner had they been given an opportunity as contemplated by the Bye-law and therefore would exhort that the impugned orders, ex facie, are illegal and invalid and become liable to be quashed besides warranting a direction to reinstate the petitioners as prayed for in the writ petitions.

13. So far as the learned Additional Government Pleader (Cooperatives) is concerned, he would argue that it is a mere retrenchment and the petitioners are out of office already and it is upto them to raise the dispute in the Labour forum and these writ petitions could not be allowed and they are liable only to be dismissed.

14. A careful perusal of the orders impugned would reveal that the order dated 18.7.2002 made by the first respondent herein would point out certain irregularities occurred in the appointments of the petitioners and others effected in the year 1997 on the basis of the findings on inspection and report dated 10.6.2002 and would request the second respondent to take immediate steps to remove them from service immediately since the appointments of the petitioners and others were made against the provisions of the Bye-laws of the second respondent Cooperative Society.

15. Consequent to the above direction in the orders impugned first above made by the first respondent, the second respondent would issue the second order impugned in Rc.No.420/2000, dated 24.7.2002 stating thereby that the order of the first respondent required the second respondent to remove them forthwith on ground that their recruitments are irregular and thereby ordering the removal of the petitioners from the Society forthwith with effects from 24.7.2002. It is under these circumstances, the petitioners, who have been removed from service in the manner aforementioned after having put-in five years of service with regularisation, have come forward to file the above writ petitions seeking the reliefs extracted supra.

16. As argued on the part of the learned Additional Government Pleader (Cooperatives), though the statutory avenue is open for the petitioners to exhaust their regular remedy in the labour forum, still, such argument would be applicable only to legal orders passed. When the learned Additional Government Pleader is not able to resist the case of the petitioners regarding the opportunity contemplated under Bye-laws No.65(6)(i)(b) and 65(13)(a) and (c) of the Government Telecommunication Employees Cooperative Society Limited thereby contemplating `at least one month's notice or wages in lieu of such notice', needless to mention that the argument of the learned Additional Government Pleader to direct the petitioners to seek remedy in the appropriate Labour forum falls to the ground. Since under the warranting provisions of the Bye-law requiring the opportunity to be afforded having not been complied with, this Court has no hesitation to arrive at the conclusion to allow the above writ petitions as prayed for. Since the illegality has not only been committed on the part of the respondents in their orders in violation of the mandatory requirement of the Bye-law but also in violation of the principles of natural justice, undoubtedly the order passed by the first respondent dated 18.7.2002 which recommends the immediate removal of the petitioners and the consequent second

order passed by the second respondent dated 24.7.2002 removing the petitioners abruptly from their services, so far as they are concerned with the petitioners, are tainted with illegality and unsustainable in law and they become only liable to be quashed.

In result,

(i)Both the above writ petitions are allowed;

(ii)the order of the first respondent in Reference No.Lr.Rc.4821/2002 /C3, dated 18.7.2002 and the consequential order passed by the second respondent in Reference Rc.No.420/2000, dated 24.7.2002 are quashed, in so far as the petitioners are concerned.

(iii)The respondents are directed to reinstate the petitioners in their capacities from which they were removed from out of service by the orders impugned with backwages and all consequential and monetary benefits.

(iv) However, the respondents are at liberty to initiate fresh proceedings against the petitioners in compliance of the legal provisions as contemplated by the Bye-laws and the other governing Rules and procedures.

However, in the circumstances of the cases, there shall be no order as to costs.

Consequently, W.P.M.Ps.47842, 47843 and 47112 of 2002 are closed.

Index: Yes
Internet:Yes 23.8.2002.
Rao

To

1.The Joint Registrar of
Cooperative Societies,
Chennai Region,
Chennai-600 018.

2.The President,
The Government Telecommunication
Employees Cooperative Society Limited,
No.37-A, Sembudoss Street,
Chennai-600 001.

V.KANAGARAJ, J.

Common order in Wps.29447 and
32394 of 2002 and WPMPs.